



WISCONSIN REGULATORY DIGEST

A Publication of the DEPARTMENT OF REGULATION AND LICENSING FOR REAL ESTATE LICENSEES

Volume 11, No. 1

June, 1998

A Message From the Chair by James R. Imhoff, Jr.

In the last issue of the Regulatory Digest I told you about the formation of a Buyer Agency Advisory Committee and I laid out some basic principles pertaining to buyer agency. Some of you sent your own comments and suggestions. I thank you for that.

The Buyer Agency Advisory Committee has had several excellent meetings and it is close to making some recommendations.

Some of the letters sent to me focused on the issue of offers being drafted by buyer agents where the buyer requests that the seller, as a condition of the offer, pay the buyer's agent's fee. This issue has been confusing for some licensees.

However, we must remember that inserting such a condition is being done at the buyer's request. Therefore, it is an appropriate condition of the offer.

THE WISCONSIN REAL ESTATE BOARD

Board Members

James R. Imhoff, Jr., Chair, Madison
Beechie O. Brooks, Vice-Chair, Milwaukee
Kathryn M. Neitzel, Secretary, Madison
Christine Nuernberg, Mequon
Nancy Gerrard, La Crosse
Richard Hinsman, Racine
Bettye J. Lawrence, Madison

Administrative Staff:

Cletus J. Hansen, Division Administrator

Executive Staff

Marlene A. Cummings, Secretary
Patricia McCormack, Deputy Secretary
Myra Shelton, Executive Assistant

The buyer has every legal right to include such a condition. This is similar to the buyer requesting a seller to pay other closing costs, financing fees or a dollar allowance for repairs or improvements to be made to the property at closing. The concept is simply that the buyer is writing an offer at a price high enough to give the seller the seller's price, plus the additional fees.

When the agents in our company receive such offers, we have instructed them to never become involved in what the buyer's agent's fees are or what other closing costs are asked for in the offer, but simply to discuss with the seller the net that will satisfy the seller, and then to counter the offer at a price that includes the fees or costs.

Let's take, for example, an offer at \$100,000 which requests closing costs or buyer's agent's fees of \$3,000. The seller is agreeable to an offer of \$98,000, but without the extra \$3,000. The mistake would be to counter out the \$3,000, as the buyer may walk away because the buyer is, in effect, financing a portion of

Contents

A Message From the Chair.....	1
Agency Disclosure	2
Buyer Agency Advisory Committee Members	2
Observations of the Complaint Screening Panel	2
Milwaukee Code Concerning Recording	3
Contractual Forms	3
Renewal of Licenses.....	3
Reciprocity of Licensure	3
Legislation.....	3
Board Member Changes	4
Former Board Member Authors Book	4
Disciplinary Actions.....	4
1997-98 Continuing Education Requirements	5

the fees by including them in the offer. The proper way to proceed here would be to counter at \$101,000,

leaving the \$3,000 of fees in the price. Everybody wins.

The question comes up as to the listing broker's commission. Does the listing broker have to reduce his or her commission by what the buyer's agent is asking in the offer? The answer is no. At our company we give our agents the authority to reduce the commission by only the amount that we offered the co-broker in cooperation, but only if necessary.

For example, if we have the property listed at 6% and are offering the co-broker 3%, and we receive an offer asking the seller to pay 4%, our agent can amend our listing, if necessary, down to 3%. But we always suggest to the seller not to make any counteroffer affecting the buyer's fee of 4%, but simply to counter the price high enough to cover the seller's net and the fees.

The real issue is that the agent for the seller should never be concerned with the fee negotiated between the buyer and the buyer's agent. Likewise, the buyer's agent should never be concerned with the fee negotiated between the seller and the seller's agent.

Agency Disclosure

In completing recent audits, Department auditors have discovered that licensees are not always completing the agency disclosure form in a timely and appropriate manner. Often the agency form is signed by the buyer on the same date as the offer to purchase. Administrative rules, enforced by the Real Estate Board, require that the disclosure of agency be made "prior to providing brokerage services to a party." This does imply that the disclosure be made before showing any property.

Please review your practice. Are you violating the rules? You may also be putting yourself in a difficult position with the buyer who hasn't been given a prior notice of your agency relationship in the transaction.

Members of the Real Estate Buyer-Agency Advisory Committee

James Imhoff Jr., Chair (Madison)
Kathy Bakalars (Onalaska)
Rick Bohman (Pewaukee)
Gary Brenizer (Altoona)
Jan Byrne (Madison)
Pat Dollins (Hartland)
Cletus Hansen (DRL Staff)
Walter Hellyer (Fish Creek)
Richard Hinsman (Racine)
Michael Holloway (Shorewood)
Luddie Holmes (Milwaukee)
Charles Howden (DRL Staff)
Bill Kessler (Madison)
Lynn Krey (Madison)

Barb McGill (Waukesha)
Donald Rittel (DRL Staff)
Jill Rooney (Appleton)
Sharon Sinklair (Muskego)
Rick Staff (Madison)
G Ronald Zahrt (Wausau)

Observations of the Complaint Screening Panel

Complaints against real estate licensees are logged into the computer and then reviewed by a screening panel at a monthly review session. The Screening Panel is made up of Board Members, Richard Hinsman and Kathryn Neitzel, the Supervisor of the Prosecutors in the Division of Enforcement, the Supervisor of Investigators, and a prosecutor in the Division of Enforcement. The purpose of the Screening Panel is to determine whether an investigation should be opened, whether more information should be obtained to make a decision to open or not, and to provide guidance to the investigator if a case is opened.

The Screening Panel has made a number of observations which would at least help licensees provide better services to their clients and customers and which would, in some cases, help licensees avoid being the subject of an investigation.

1. Sellers should be made aware of the listing broker's intentions to not cooperate with a buyer's broker or with other brokers in a sub-agency agreement. (In the next issue of the Regulatory Digest, watch for a recommendation of the Buyer Agency Advisory Committee regarding this issue.)

2. Some brokers are refusing to cooperate with brokers who do not carry E&O Insurance. Sellers should know this is happening and why.

3. Licensees must be reminded of s. RL 24.04(2), Wis. Admin. Code, which says that a broker must in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. RL 23.03, and in either case clearly indicate that the broker is a business concern and not a private party. A broker or salesperson employed by a broker shall advertise under the supervision of and in the name of the employing broker. A licensee may advertise the occasional sale of real estate owned by the licensee or the solicitation of real estate for purchase by the licensee without complying with the requirements in the first sentence, provided that the licensee clearly identifies himself or herself or itself as a real estate licensee in the advertisement. Brokers may not advertise property without the consent of the owner. Brokers may not advertise property at a price other than that agreed upon with the owner; however, the price may be stated as a range or in general terms if it reflects the agreed upon price.

4. Courtesy dictates that anyone mailing the offer or counter-offer should be given something back in writing (if rejected). Indeed, the offer can die a natural death if the time or date expires, but failure to give written notice certainly does not represent cooperation or courtesy at its best.

5. Many complaints are submitted to the Board by a broker who refers to someone as "My Buyer," when, in fact, the broker is acting as the agent of the seller. (Hopefully, imprecise language does not reflect a lack of understanding of Wisconsin's law of agency.)

6. Brokers frequently sign as the agent of the seller or the buyer, when, in fact, they are not the agent of one or the other. This happens, especially, on closing statements. Brokers are cautioned to obtain written permission from the seller or buyer, if a seller or a buyer will not be at the closing and the broker takes it upon himself or herself to sign papers on behalf of the party.

7. Licensees should be cautioned that they must not only follow s. RL 24.07(1), in regard to improved property, but also in regard to a lot or other vacant land. They must, if given access to a lot, make an observation of the lot from at least one point on or adjacent to the property.

Milwaukee Code Concerning Recording

The Milwaukee Department of Building Inspection has requested that the Department make reference to the Milwaukee ordinance which requires all buyers of all buildings, except one- and two-family owner-occupied structures to record their ownership with the Milwaukee Building Inspection Department. Sellers are required to notify the Department of Building Inspection of the transaction. Failure to do so will lead to increased fees and penalties. The information is used to resolve as many property problems as possible over the telephone. Please refer to Section 200-51.5 of the Milwaukee Code of Ordinances, entitled Recording of Residential and Commercial Buildings.

Contractual Forms

The Contractual Forms Advisory Council has been meeting regularly and reviewing the Residential Listing Contract and the Residential Offer to Purchase. Look for revised forms to be available sometime this fall. The revisions will not be mandatory until you have been given sufficient notice in the next issue of the Regulatory Digest and until you have had ample opportunity to deplete your current supply of forms. As for the changes, there may be quite a few changes of words, phrases and sentences; however, the form will be substantially as it is now. More than likely some of the other listing and offer forms will be revised later.

Renewal of Licenses

Real estate licenses will expire on December 31, 1998. The Department will send to licensees a renewal notice and information about the renewal process approximately 6 weeks before the renewal deadline. Registrants who wish to renew in a timely manner and be able to legally practice as of January 1, 1999, must submit their renewal application and the renewal fee to the Department by December 31, 1998. Licensees may submit their application later; however, if they do, they will not be able to practice until they have actually received a renewal certificate. Any licensee who submits a renewal application without the required evidence of completion of continuing education will receive a notice of having filed an incomplete application. The license will not be renewed until the licensee subsequently submits proof of having completed the continuing education.

Reciprocity of Licensure

Wisconsin has entered into a reciprocal licensing agreement with Minnesota. The agreement maintains the requirements which Wisconsin imposes by law on persons who are licensed in any other state. These requirements are that the person applying for a salesperson's license must take the specified 13 hours of education at a Wisconsin-approved school, must complete the remaining portion of the 72 hours of education in the other state and must pass the state portion of the salesperson's pre-license exam. A broker applicant must take the specified 3-hour course at a Wisconsin-approved school, must complete the remaining portion of the 36 hours of education in the other state and must pass the complete broker's pre-license exam. The advantage of the reciprocal agreement is that Wisconsin's licensees receive the same treatment when they apply for a license in Minnesota.

Legislation

Home Inspectors. Governor Tommy Thompson signed into law AB 334 on April 13, 1998. The new law, 1997 Wisconsin Act 81, relates to the regulation of home inspectors. That means that home inspectors will need to be registered with the Department, effective on November 1, 1998. Meanwhile, the Department will be preparing or arranging for a registration examination, appointing a 9-person advisory committee, and preparing administrative rules. If you would like a copy of the law, please send a self-addressed envelope with first class postage to the Home Inspection Section in the Department.

Commercial Liens, SB 369. This bill would establish a real estate broker's commission lien. SB 369 passed both the Senate and Assembly and awaits the Governor's signature as of May 8, 1998.

1997-1998 REAL ESTATE CONTINUING EDUCATION REQUIREMENTS

All licensees, except those who were issued their first Wisconsin real estate license after January 1, 1997, must satisfy the continuing education requirement during 1997-98 in order to renew their license in a timely manner in the fall of 1998. The license renewal deadline is December 31, 1998. Licensees may complete the 1997-98 continuing education after that date; however, their license may not be renewed until they complete the education and pay a late renewal fee of \$25 and they may not engage in the practice of real estate after that date.

There are two basic alternatives for completing the requirement:

ALTERNATIVE #1: Continuing Education Courses Approved by the Department

Attend 4 courses of at least 3 hours in length at a school approved by the Department. The 4th Course ONLY has options which relate to specific areas of practice. **All courses must be approved by the Department before a school may grant a certificate of attendance to a licensee.**

- | | |
|-----------|--|
| Course 1 | Listing Issues (Everyone must take.) |
| Course 2 | Offer to Purchase and Other Sales Contracts (Everyone must take.) |
| Course 3 | New Developments (Everyone must take.) |
| Course 4A | General Real Estate Practice Elective (Everyone must take this elective OR one of the other 4 electives.) |
| Course 4B | Broker-Manager Elective (Everyone must take this elective OR one of the other 4 electives.) |
| Course 4C | Commercial Elective (Everyone must take this elective OR one of the other 4 electives.) |
| Course 4D | Property Management Elective (Everyone must take this elective OR one of the other 4 electives.) |
| Course 4E | Rural/Farm/Vacant Land Elective (Everyone must take this elective OR one of the other 4 electives.) |

ALTERNATIVE #2: Continuing Education Test-Out Exam

This alternative will be available from July 1, 1997 until June 30, 1998. The cost of the exam will be \$49.

A study guide is available from the Wisconsin Realtors Association.

Department of Regulation and Licensing
Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

REGULATORY DIGEST

Bulk Rate
U.S. Postage
Paid
Madison, WI
Permit No. 1369

RETURN SERVICE REQUESTED

taken and passed the test-out examination for continuing education required for renewal. He had in fact not taken the test-out examination at the time he submitted his application. Suspended for 30 days. Also limited. Ordered to pay a forfeiture of \$250 and costs of \$100. Effective 12/11/97. Sections 452.12(5)(c) and 452.14(3), Stats. Case # LS9712117REB.

LEONARD L. LOFFREDO - SALESPERSON
OCONOMOWOC WI **SUSPENDED; LIMITED**
On his renewal application he indicated that he had taken and passed the test-out examination for continuing education required for renewal. He had in fact not taken the test out examination at the time he submitted his renewal application. Suspended for 30 days. Also limited. Also ordered to pay a forfeiture of \$250 and costs of \$100. Effective 12/11/97. Sections 452.12(5)(c) and 452.14(3), Stats. LS9712112REB.

THOMAS R. QUASIUS - BROKER
HUDSON WI **SUSPENDED; LIMITED**
On his application for renewal he indicated that he had taken and passed the examination in lieu of continuing education courses. He had in fact neither taken continuing education nor taken the substitute examination for renewal. Suspended for 30 days. Also limited. Also ordered to pay a forfeiture of \$250 and costs of \$100. Effective 12/11/97. Sections 452.12(5)(c) and 452.14(3), Stats. Case # LS9712116REB.

LUCILLE E. MACDONALD - BROKER
JANESVILLE WI **SURRENDER**
On her renewal application she indicated that she had taken and passed the examination in lieu of completing continuing education courses. She had in fact neither taken continuing education nor taken the substitute examination. She voluntarily surrendered her real estate broker's license. Effective 12/11/97. Secs. 452.12(5)(c) and 452.14(3), Stats. Case # LS9712113REB.

GERALD G. HALASKA - BROKER
EGG HARBOR WI **SURRENDER**
DYNACON DEVELOPMENT CORPORATION -
BROKER
BROOKFIELD WI **SURRENDER**
Failed, within a reasonable time, to account for or remit moneys coming into its possession which moneys belonged to another person. Effective 10/23/97. Sec. 452.14(3)(h) and (i), Stats. Case # LS9710231REB.

JOSEPH J. ZIPPERER - SALESPERSON
JANESVILLE WI **LIMITED**
Found guilty of one count of indecent exposure. Failed to timely report this conviction to the department. Ordered to obtain professional health care provider assessment prior to resuming practice. Effective 2/26/98. Sec. 452.14(3)(i), Stats. RL 24.17(1) and (2) Case # LS9802262REB.

G:\DIGEST\REAL698.DOC